

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3494 of 2017
and C.M.P.No.16240 of 2017

1.Subramaniam

2.Manickamoorthy

.. Petitioners

Vs.

1.Sakunthala

2.Viswanathan

3.Tamilselvi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 28.07.2017 made in I.A.No.986 of 2017 in O.S.No.709 of 2012 on the file of the District Munsif Court, Avinashi.

For Petitioners : Mr.C.Munusamy

For R1 and R2 : Mr.I.C.Vasudevan

For R3 : No appearance

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”.)

Civil Revision Petition is filed against the fair and decretal order dated 28.07.2017 made in I.A.No.986 of 2017 in O.S.No.709 of 2012 on the file of the District Munsif Court, Avinashi.

2.Though notice has been served on the 3rd respondent and her name is printed in the cause list, there is no representation for the 3rd respondent either in person or through counsel.

3.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents 1 and 2 and perused the materials available on record.

4.The petitioners are the plaintiffs and respondents are the defendants in O.S.No.709 of 2012 on the file of the District Munsif Court, Avinashi. The petitioners filed the suit for declaration and injunction. The petitioners claimed title through the Will dated 05.04.2005 executed by their father Kandasamy Gounder. The respondents filed written statement on 30.12.2005 and are contesting the suit. The petitioners filed I.A.No.986 of 2017 under Order XVI Rule 10(A) and Section 151 of C.P.C. read with Section 45 of Evidence Act to send the Will dated 05.04.2005 containing the disputed thumb impression of the deceased Kandasamy Gounder along with the Will dated 30.03.2005 to the handwriting expert attached to Tamil Nadu Forensic Department of Chennai, to get expert's opinion.

5.According to the petitioners, their father executed the Will dated 05.04.2005 in favour of the petitioners with knowledge of the respondents, in which earlier Will dated 30.03.2005 was cancelled by their father. The Will dated 05.04.2005 is the last Will. In the written

statement, the respondents have denied the execution of the Will dated 05.04.2005 and stated that the Will dated 05.04.2005 is created and forged one and the Will dated 30.03.2005 is genuine and last Will of the said Kandasamy Gounder. In view of the same, the petitioners filed the present I.A. to send the Will dated 05.04.2005 along with the earlier Will dated 30.03.2005 to compare the thumb impression found in the Will dated 30.03.2005. The petitioners further stated that the original Will dated 30.03.2005 was in the custody of the 2nd respondent. The petitioners filed I.A.No.1137 of 2016 to produce the original Will dated 30.03.2005 before the Court. The said I.A. was allowed and the respondents have produced the original Will dated 30.03.2005 before the Court on 04.07.2017. If the thumb impression in the Will dated 05.04.2005 is compared with the admitted thumb impression in the Will dated 30.03.2005, it will be helpful to the Court to decide the issue.

6.The respondents filed counter affidavit and denied all the averments made in the affidavit filed by the petitioners and reiterated the

averments made in the written statement and submitted that the petitioners are residing far away from the suit property. With an intention to take over the property, they fabricated and forged the Will dated 05.04.2005 and filed suit only to grab the suit property from the respondents and prayed for dismissal of the said I.A.

7.The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed the I.A. holding that if the thumb impressions in both the Wills differ, it will not be possible for the Court to decide which Will is genuine and the petitioners have not claimed to compare the thumb impression of Kandasamy Gounder with any other documents and no purpose will be served by sending the document for comparison.

8.Against the said fair and decretal order dated 28.07.2017 made in I.A.No.986 of 2017 in O.S.No.709 of 2012, the petitioners have come out with the present Civil Revision Petition.

9.From the materials available on record, it is seen that the petitioners are claiming title to the suit property through Will dated 05.04.2005 executed by their father Kandasamy Gounder. It is the case of the petitioners that earlier, their father executed Will dated 30.03.2005 in favour of the respondents. Their father cancelled the said Will and executed the Will dated 05.04.2005 bequeathing the suit property in favour of the petitioners with knowledge of the respondents and the petitioners. The petitioners admitted that their father executed the Will dated 30.03.2005 in favour of the respondents, but contended that their father cancelled the said Will and executed the Will dated 05.04.2005 in their favour. On the other hand, it is the case of the respondents that the Will dated 30.03.2005 is the last Will and the Will dated 05.04.2005 is a fabricated one and forged by the petitioners. It is further case of the respondents that Kandasamy Gounder did not execute the Will dated 05.04.2005.

10.From these averments of the petitioners and respondents, the thumb impression in the Will dated 30.03.2005 is admitted as thumb impression of Kandasamy Gounder by both the parties. When the respondents dispute the thumb impression in the Will dated 05.04.2005, it is for the petitioners to prove that the said thumb impression is genuine and it is the thumb impression of their father Kandasamy Gounder. The learned Judge erred in holding that the petitioners have not sought for comparison of thumb impression in the Will dated 05.04.2005 with thumb impression of admitted document. The Will dated 30.03.2005 is available before the Court and thumb impression in the said Will is admitted by both the petitioners and respondents as thumb impression of Kandasamy Gounder. If the handwriting expert compares both the Wills, his opinion with regard to thumb impression in the Will dated 05.04.2005 will help the Court to come to the conclusion whether the Will dated 05.04.2005 is genuine or forged one.

11. In view of the above materials, the reason given by the learned Judge that the petitioners have not claimed to compare the thumb impression of Kandasamy Gounder with admitted document is contrary to the materials on record and is erroneous. The learned Judge has committed irregularity and failed to exercise his power properly. For the above reason, the order of the learned Judge is liable to be set aside and is hereby set aside. I.A.No.986 of 2017 in O.S.No.709 of 2012 is allowed. It is well settled that the original document cannot be sent directly to the Forensic Department for comparison and for getting opinion with regard to signature or thumb impression. In view of the same, the learned Judge is directed to appoint an Advocate Commissioner and direct the Advocate Commissioner to take both the Wills dated 30.03.2005 and 05.04.2005 to the Forensic Department for comparison and get opinion with regard to genuineness of thumb impression found in the Will dated 05.04.2005 and file report into the Court. The petitioners have to bear all the expenses and Advocate Commissioner's remuneration in this regard.

12.With above direction, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No
Internet:Yes/No
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To

The District Munsif
Avinashi.

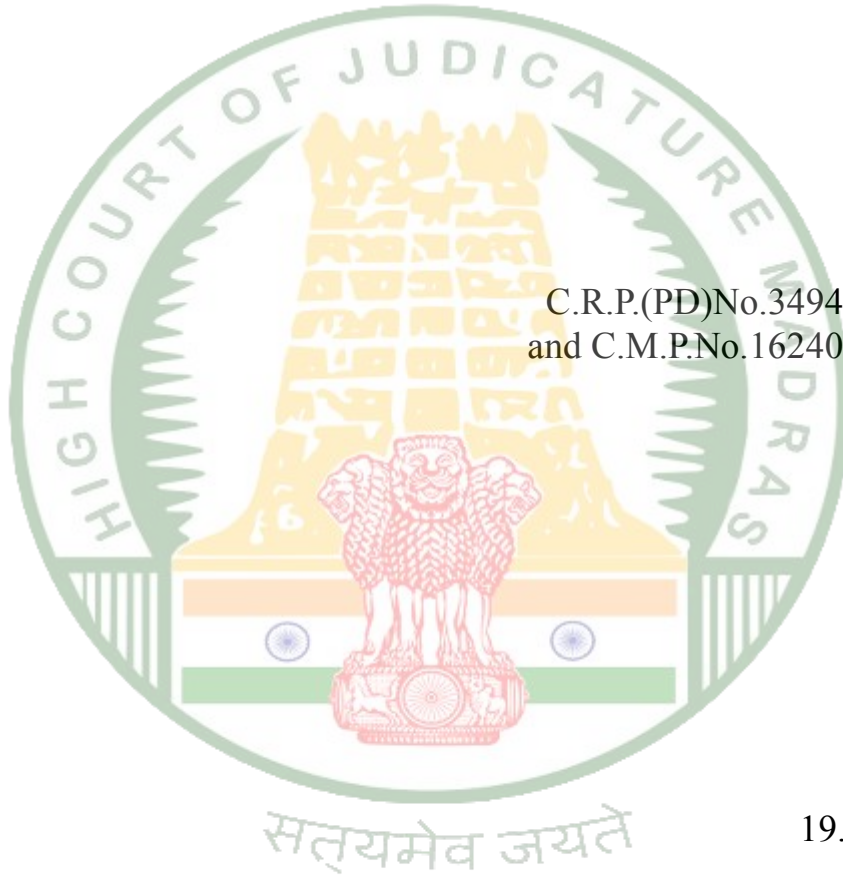


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